IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL REVISION NO. 5479 OF 2003
DATE OF DECISION: October 18, 2006.

Parties Name

Rashid Ahmad etc.

...PETITIONERS

VERSUS

Kamaludeen and others

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. S.S. Dinarpur, Advocate, for the petitioners.

None for respondent No. 1.

Mr. R.K. Dhiman, Advocate, for respondent No. 2.

JASBIR SINGH, J. (oral)

ORDER:

This petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC with a prayer to set aside the order dated August 30, 2003, passed by the Additional Civil Judge (Senior Division), Jagadhri and to rectify the judgment and decree dated May 30, 1998, passed in civil suit No. 417, by ordering deletion of the name of Alibaj son of Salatandeen from the array of the parties, in that suit.

Perusal of the records reveal that there was some oral exchange between the petitioners and one Kamaludeen. The petitioners filed civil suit No. 417 on March 18, 1998, claiming declaration to the effect that they be declared owners in possession, in equal share, of the land measuring 7 Kanals 15 Marlas, detail of which was given in the heading of the plaint. In that suit, they impleaded Alibaj, their brother, as one of the respondents.

Suit was decreed on May 30, 1998, on the basis of statement, made by Kamaludeen, respondent No. 1, wherein he admitted the factum of exchange between the parties. Similarly, another suit bearing No. 262 dated May 27, 1992, was filed by Kamaldueen, respondent No. 1, against the petitioners claiming declaration that he be declared owner in possession of the land measuring 8 Kanals 1-1/2 Marla of land, detail of which was given in the heading of the plaint. That suit was also decreed on the basis of statement, made by the petitioners on October 16, 1999. Thereafter,on January 11, 2001, the petitioner filed an application in suit bearing No. 417 of 1998, decided on May 30, 1998, with a prayer that name of Alibaj be deleted from the array of the parties and necessary rectification be made in the judgment and decree, referred to above.

Upon notice, respondent No. 2 Ali Baz appeared before the Court below and made a statement on May 7, 2003, admitting claim of the petitioners, as raised by them in their application, and further stated that he had no objection if his name is deleted from the array of the parties in the plaint, originally filed by the petitioners. Despite that, trial Court vide order dated August 30, 2003 (Annexure P-2) dismissed the application, filed by the petitioners. It is apparent from the records that to decline relief to them, the Court has noticed that when plaint was filed in the suit bearing No. 417 of 1998, name of Alibaj was mentioned as one of the defendants. It has further been noticed that Alibaj had appeared before the trial Court at that time and made a statement admitting claim of the petitioners. The trial Court has further noticed that the application has been filed at a belated stage and does not seem to be bonafide.

This Court feels that the findings given are not justified

especially in view of the statement made by Alibaj, who had appeared in Court on May 7, 2003, and made a categoric statement that he had no objection in deleting his name from the array of the parties in the plaint, filed by the petitioners. Furthermore, perusal of judgment dated May 30, 1998(Annexure P-1), passed in civil suit No. 417 of 1998 and judgment dated October 16, 1999, passed in Civil Suit No. 262 clearly indicate that the land was exchanged between the petitioners and Kamaluddin, respondent No. 1, and there was no dispute with Alibaj in those proceedings. Further, finding of the Court below that as the application was moved at a belated stage for rectification of the judgment and decree, the same was liable to be dismissed, is not justified in view of the ratio of judgment of Single Bench of this Court in Gulzara Singh v. Devinder Singh, 2004(3) Civ. C.C. 455 : 2005(1) R.C.R. (Civil) 350.

A perusal of the record also shows that even before this Court, counsel for respondent No. 2 had made a statement on January 19, 2004, that respondent No. 2 had no objection in granting prayer, made by the petitioners.

In view of facts, mentioned above, this revision petition is allowed, the order under challenge is set aside and application , filed by the petitioners seeking rectification of the judgment and decree dated May 30, 1998,passed in civil suit No. 417 of 1998 is allowed and name of Alibaj, respondent No. 2, is ordered to be deleted from the array of the parties, as prayed in that application.

October 18, 2006 (Jasbir Singh)
DKC Judge